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IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No. 336

J. DU PRATT WHITE, FRANKLIN W. HOPKINS, EDWARD J. PARTRIDGE, GEORGE W. PERKINS, JR., FREDERICK C. SUTRO, GEORGE T. SMITH, WILLIAM CHILDS, W. AVERELL HARRIMAN, CHARLES W. BAKER and FREDERICK H. OSBORN, constituting the Board of Commissioners of the Palisades Interstate Park, HAMILTON WARD, as Attorney General of the State of New York, and ALEXANDER MACDONALD, as Commissioner of the Conservation Department of the State of New York,

Appellants,

against

SPARKILL REALTY CORPORATION and STANDARD TRAP ROCK CORPORATION,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK.

STATEMENT OF JURISDICTION.

Respectfully submitted,

WALTER H. POLLAK,
Counsel for Appellants.

GALLO & ACKERMAN, Inc., 142 Liberty Street, 'Phones—Rector 7257–8.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1929.

No.

J. Du Pratt White, Franklin W. Hopkins, Edward J. Partridge, George W. Perkins, Jr., Frederick C. Sutro, George T. Smith, William Childs, W. Averell Harriman, Charles W. Baker and Frederick H. Osborn, constituting the Board of Commissioners of the Palisades Interstate Park, Hamilton Ward, as Attorney General of the State of New York, and Alexander Macdonald, as Commissioner of the Conservation Department of the State of New York,

Appellants,

against

Sparkill Realty Corporation and Standard Trap Rock Corporation,

Appellees.

Appeal from the District Court of the United States for the Southern District of New York. (Three Judges Convened Pursuant to Section 266 of the Judicial Code.)

STATEMENT OF JURISDICTION.

This is an appeal by all of the defendants above named from an interlocutory injunction issued by the District Court for the Southern District of New York on June 12, 1929 (Record, or. pp. 125-129), the application therefor having been heard and granted by a court of three

judges convened pursuant to Section 266 of the Judicial Code, consisting of Honorable Martin T. Manton, Circuit Judge for the Second Judicial Circuit, and Honorable Henry W. Goddard and Honorable Frederick H. Bryant, District Judges.

The order appealed from recited (Record, or. pp. 125-6) that the Court was

> "of opinion that the provisions of chapter 242 of the laws of 1928 of the state of New York, if so construed as to vest in defendant, Board of Commissioners of the Palisades Interstate Park, power to acquire lands by entry and appropriation in the manner provided for in section fifty-nine of the conservation law of said state and all acts of defendants pursuant thereto, in the absence of funds separately appropriated by the legislature of said state in such an amount as to be reasonably certain to cover an award which may reasonably be made for said lands, are invalid as violative of the provisions of Section 1, Article XIV of the articles in addition to and amendment of the Constitution of the United States of America and of Section 6, Article I and Section 4, Article VII of the Constitution of the State of New York, and that no appropriation of funds has been made by the said legislature for said purpose",

and enjoined the defendants, pending final decree, from acting under or by virtue of Chapter 242 of the Laws of 1928 of the State of New York, or under or by virtue of a certain notice of the Board of Commissioners of Palisades Interstate Park, dated October 11, 1928, with reference to certain property described in the decree, and from in any way enforcing or attempting to enforce the provisions of the said act or notice with respect to the said property, and from continuing in possession of the said property (Record, or. p. 126).

The appellate jurisdiction of this Court is derived from Section 266 of the Judicial Code (36 Stat. 1162; as amended by act of March 4, 1913, c. 160, 37 Stat. 1013 and by act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938; U. S. C. A. Tit. 28, Sec. 380), which gives the right of direct appeal to this Court from an order granting or denying an interlocutory injunction in such case (*Williams* vs. *Standard Oil Co.*, 278 U. S., 235; *Cavanaugh* vs. *Looney*, 248 U. S., 453; *Clark* vs. *Poor*, 274 U. S., 554, 556).

Proceedings in this suit were begun by service of an order to show cause why an interlocutory injunction should not be granted, dated March 19, 1929 (Record, or. p. 6), and a bill of complaint (Record, or. p. 9). The purpose of the suit, as shown by the bill of complaint, is to restrain continued occupation of the aforesaid real property, which is located within the Southern District of New York on that part of the west bank of the Hudson River, known as the Palisades. On October 11, 1928, the appellants, constituting the Board of Commissioners of the Palisades Interstate Park, after resolution duly made by them, and with the approval of the Honorable Alfred E. Smith, Governor of the State of New York, had, in the manner provided by Sections 59 and 761 of the New York Conservation Law (Chapter 242 of the Laws of 1928), filed in the office of the Secretary of State of the State of New York a description of said property, upon which was endorsed a notice that the property had been appropriated, with the approval of the Governor, by the People of the State of New York for public and state park purposes, and on the same day serving upon the appellees—Sparkill Realty Corporation being then owner, and Standard Trap Rock Corporation being then lessee for the purpose of quarrying—notice of these proceedings (Record, or. pp. 94-112), this being the notice referred to in the order appealed from.

Thereupon on or about October 11, 1928, the appellants constituting the Board of Commissioners of the Palisades Interstate Park entered upon the said real property and continued in possession thereof until the service upon them of the order herein appealed from (Record, or. p. 91).

The bill of complaint alleged that no sum whatever has been appropriated by the State Legislature for the acquisition of plaintiffs' property by entry and appropriation (Record, or. p. 14) and prayed that part 9, Chapter 242 of the Laws of 1928 of the State of New York, and the above mentioned notice of the defendants constituting the Board of Commissioners of the Palisades Interstate Park Commission, dated October 11, 1928, and the acts of the defendants thereunder, with respect to plaintiffs' property, be adjudged "invalid as violative of the provisions of Section 10 of Article I of the Constitution of the United States of America and of Section 1, Article XIV, of the Articles in addition to, and amendment of the Constitution of the United States of America and of Section 6 of Article I and Section 4 of Article VII of the Constitution of the State of New York," and that the defendants be enjoined from continuing in possession of the said property (Record, or. pp. 16-17).

Leave to appeal was prayed for and allowed on July 22, 1929 (Record, or. p. 149), and the appeal has been duly perfected.

Respectfully submitted,

WALTER H. POLLAK,
Counsel for Appellants.

The right to file a statement opposing the jurisdiction is hereby waived.

JACKSON A. DYKMAN,
Counsel for Appellees.